

**United States Department of Labor
Employees' Compensation Appeals Board**

E.S., Appellant)
and) Docket No. 15-1663
DEPARTMENT OF THE AIR FORCE, AIR) Issued: December 22, 2015
FORCE NATIONAL GUARD, Frankfort, KY,)
Employer)

)

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 3, 2015 appellant filed a timely appeal from an April 22, 2015 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant met her burden of proof to establish that her coffee creamer was spiked with Clonazepam at work, causing an emotional condition.

FACTUAL HISTORY

On February 19, 2015 appellant, then a 45-year-old Information Technology specialist, filed an occupational disease claim (Form CA-2) alleging that she experienced psychological

¹ 5 U.S.C. § 8101 *et seq.*

illness and stress as a result of a coworker spiking her personal coffee creamer with the drug Clonazepam. She explained that she came to this realization after a considerable amount of anxiety, paranoia, sleep deprivation, and stress consumed her daily routine. Appellant first became aware of her condition on November 27, 2014 and realized that it resulted from her employment on December 2, 2014. On the back of the claim form, appellant's supervisor reported that appellant had not stopped work. She related that on December 19, 2014 appellant requested that she be physically moved to a different location due to elevated stress and anxiety. On January 8, 2015 appellant was moved to a different building to alleviate the stress, but she continued to work with the same coworkers and perform the same work.

In various narrative statements, appellant explained that her coworkers targeted her and spiked her coffee creamer with the drug Clonazepam without her knowledge. She noted that her coworkers continued to work in the same location as her. Appellant stated that although she did not know the exact date that her coffee creamer was spiked with Clonazepam, she believed that it happened around October 10, 2014 when she brought the creamer home from work. She continued to use the coffee creamer and began to experience the drug's side effects of dizziness, poor coordination, tiredness, trouble concentrating, unsteadiness, trembling, shakiness, and unsteadiness. Appellant described that on the morning of November 27, 2014, she was refilling her coffee cup at home for a second cup of coffee when she noticed something yellow in the bottom of her cup. When she examined it further she realized that it was a pill. Appellant dumped the rest of the creamer onto a small saucer and found approximately nine Clonazepam pills in it. She contacted the police. Appellant indicated that she was including a police report and pictures of the pills.

Appellant reported that she did not have evidence, such as witness statements, to substantiate when someone put Clonazepam in her coffee creamer, but she had a witness statement from someone who noticed the symptoms she was experiencing. She explained that she stored her personal coffee creamer in an unlocked cabinet in her office space and that other employees had access to where it was stored. Appellant stated that the incident was being investigated by the Office of Complex Investigations. She noted that although she did not seek medical treatment on each date that she ingested the Clonazepam, she sought medical treatment for some of the anxiety and depression she was experiencing as an effect of ingesting the pills.

Appellant submitted a November 27, 2014 police report for second degree wanton endangerment. Within the report she indicated that the incident occurred at home. Appellant related that she had felt weird and sluggish for the past several weekends but did not know why. She had brought home her coffee creamer from work and found several Clonazepam pills in her creamer. Appellant also included a November 28, 2014 drug monitoring report which revealed that the drug Clonazepam was present.

In a March 3, 2015 statement, appellant's husband, reported that on two instances he witnessed appellant under the influence of the drug Clonazepam. He stated that on approximately October 21 and November 27, 2014 she was unsteady on her feet, bumping into things, and acting like someone that had been drinking.

By letter dated March 20, 2015, OWCP advised appellant that the evidence submitted was insufficient to establish her claim. It requested additional factual evidence to substantiate

that she actually experienced the incidents as described and additional medical evidence to establish that she sustained a diagnosed condition as a result of her employment. OWCP issued a similar development letter to the employing establishment.

In a March 27, 2015 narrative report, Jennifer E. Townsend, a licensed clinical social worker, noted that appellant began attending therapy on January 30, 2015 because she was experiencing anxiety, some depression, sleeplessness, and nightmares since November 27, 2014 when appellant discovered some Clonazepam in her coffee creamer. Appellant reported that she also experienced physical side effects of dizziness, poor coordination, tiredness, trouble concentrating, unsteadiness, trembling, shakiness, and unsteady gait. Ms. Townsend related that appellant still experienced anxiety and stress at work around her coworkers because she did not know which one of them was responsible for putting the drug in her creamer. She diagnosed adjustment disorder with mixed anxiety and depressed mood.

On April 2, 2015 Linda Wolverton, an OWCP manager at the employing establishment, responded to the March 20, 2015 development letter. She asserted that appellant's claim did not meet all the requirements for acceptance because appellant did not submit supporting medical documentation to establish the injury. Ms. Wolverton also contended that the alleged incident did not occur in the performance of duty, as the date of injury was noted as Thanksgiving Day, a federal holiday, and appellant was not authorized to work on that date. She pointed out that the incident also occurred at appellant's home, not her duty station.

On April 6, 2015 Dr. Terry M. Hagan, a Board-certified psychiatrist, examined appellant. In a narrative report he related that she had been seeing a social worker since she discovered Clonazepam in her creamer last Thanksgiving. Appellant believed that the act was done to get her to test positive on a drug test at work. She reported that she also had trouble sleeping and had nightmares. Dr. Hagan reviewed appellant's history and provided findings on examination. He diagnosed acute stress disorder and work stress. Dr. Hagan opined that appellant's anxiety was an activation of a mild generalized anxiety, such that, she now had an acute stress disorder superimposed upon her generalized anxiety, as a result of the assault at work regarding Clonazepam in her coffee.

In an April 8, 2015 report, Dr. Hagan, indicated that he read narratives regarding appellant's claim and agreed with them. He opined that her anxiety was a direct cause of the stated work situation.

On April 8, 2015 appellant responded to OWCP's development letter. She stated that she did not know when the coffee creamer was spiked, but she discovered the Clonazepam in her coffee creamer on November 27, 2014. Appellant noted that there were no witnesses to her coffee creamer being spiked, but there was a pending investigation that may provide a witness. She described the November 27, 2014 incident where she found the Clonazepam in her coffee creamer at home. Appellant explained that she did not seek medical treatment on each of the dates she ingested Clonazepam because she was not aware that she was ingesting it. She noted that she sought medical treatment for some of the anxiety and depression issues she had experienced due to spiking her coffee creamer at work. Appellant related that, beginning in the later part of October 2014, she experienced symptoms of unknowingly ingesting the Clonazepam, including dizziness, poor coordination, tiredness, trouble concentrating,

unsteadiness, trembling, shakiness, and unsteady walk. She indicated that she did not have any prior emotional conditions.

In a decision dated April 22, 2015, OWCP denied appellant's claim finding that she failed to establish fact of injury as the evidence was insufficient to support that the "injury and/or events occurred" as she described.

LEGAL PRECEDENT

An employee seeking benefits under FECA has the burden of proof to establish the essential elements of his or her claim by the weight of the reliable, probative, and substantial evidence² including that the individual is an employee of the United States within the meaning of FECA; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁴

Workers' compensation law does not apply to each and every injury or illness that is somehow related to a claimant's employment.⁵ There are situations where an injury or illness has some connection with the employment but nevertheless does not come within the concept or coverage of workers' compensation.⁶ In the case of *Lillian Cutler*,⁷ the Board explained that there are distinctions as to the type of employment situations giving rise to a compensable emotional condition under FECA. Where an employee experiences emotional stress in carrying out his or her duties, or has fear and anxiety regarding his or her ability to carry out his or her duties, and the medical evidence establishes that the disability resulted from his or her emotional reaction to such situation, the disability is generally regarded as due to an injury arising out of and in the course of employment. This is true when the employee's disability resulted from her emotional reaction to her day-to-day duties. The same result is reached when the emotional disability resulted from the employee's emotional reaction to a special assignment or requirement imposed by the employing establishment or by the nature of the work.⁸

On the other hand, when a disability results from an employee's feelings of job insecurity *per se*, fear of a reduction-in-force, or frustration from not being permitted to work in a particular environment or hold a particular position, unhappiness with doing work, or frustration in not

² *J.P.*, 59 ECAB 178 (2007); *Joseph M. Whelan*, 20 ECAB 55, 58 (1968).

³ *Joe D. Cameron*, 41 ECAB 153 (1989).

⁴ *Michael E. Smith*, 50 ECAB 313 (1999).

⁵ *L.D.*, 58 ECAB 344 (2007); *Robert Breeden*, 57 ECAB 622 (2006).

⁶ *A.K.*, 58 ECAB 119 (2006); *David Apgar*, 57 ECAB 137 (2005).

⁷ 28 ECAB 125 (1976).

⁸ *Id.*; see also *Trudy A. Scott*, 52 ECAB 309 (2001).

being given the work desired, such disability falls outside FECA's coverage because they are found not to have arisen out of employment.⁹ The only requirements of employment which will bring a claim within the scope of coverage under FECA are those that relate to the duties the employee is hired to perform.¹⁰

A claimant has the burden of proof to establish by the weight of the reliable, probative, and substantial evidence that the condition for which she claims compensation was caused or adversely affected by the employment factors.¹¹ This burden includes the submission of a detailed description of the employment factors or conditions which she believes caused or adversely affected a condition for which compensation is claimed and a rationalized medical opinion relating the claimed condition to compensable employment factors.¹²

In cases involving emotional conditions, the Board has held that, when working conditions are alleged as factors in causing a condition or disability, OWCP, as part of its adjudicatory function, must make findings of fact regarding which working conditions are deemed compensable work factors of employment and are to be considered by a physician when providing an opinion on causal relationship and which working conditions are not deemed compensable factors of employment and may not be considered.¹³ If a claimant does implicate a factor of employment, OWCP should then consider whether the evidence of record substantiates that factor. As a rule, allegations alone by a claimant are insufficient to establish a factual basis for an emotional condition claim. The claim must be supported by probative evidence.¹⁴

ANALYSIS

Appellant has alleged that she experienced extreme stress, anxiety attacks, and other physical ailments as a result of unknowingly ingesting coffee creamer that was spiked with Clonazepam pills by a coworker. She has not attributed her emotional condition to the performance of her regular work duties or to any special work requirement arising from her employment duties under *Cutler*.¹⁵

OWCP denied appellant's claim finding that she failed to establish fact of injury. As a preliminary matter, the Board must review whether the alleged incident is a covered employment factor under FECA.¹⁶

⁹ *William E. Seare*, 47 ECAB 663 (1996).

¹⁰ See *Anthony A. Zarcone*, 44 ECAB 751 (1993).

¹¹ See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹² See *Effie O. Morris*, 44 ECAB 470, 473-74 (1993).

¹³ See *Dennis J. Balogh*, 52 ECAB 232 (2001).

¹⁴ See *Charles E. McAndrews*, 55 ECAB 711 (2004).

¹⁵ *Supra* note 7.

¹⁶ See *P.W.*, Docket No. 15-605 (issued June 1, 2015).

Appellant has attributed her emotional condition to someone targeting her at her workplace, so that she might test positive on a drug test, ending her career. Specifically, she asserts that someone spiked her personal coffee creamer with Clonazepam pills. The Board has found that for harassment to give rise to a compensable disability, there must be evidence which establishes that the acts alleged or implicated by the employee did, in fact, occur.¹⁷ A claimant must establish a factual basis for her allegations with probative and reliable evidence.¹⁸

In this case, appellant has acknowledged that she does not know which coworker spiked her coffee creamer or exactly when the spiking would have occurred. She has indicated that she brought coffee creamer home from work around October 10, 2014. Appellant has explained that she first found the pills in her coffee cup at home, on Thanksgiving Day. She has not explained why she found the pills in her coffee at home on Thanksgiving, or if the creamer she stored at work in an unlocked cabinet was the same spiked creamer. When an employee claims that he or she sustained an injury in the performance of duty, he or she must submit sufficient evidence to establish that he or she experienced a specific event, incident or exposure occurring at the time, place, and in the manner alleged.¹⁹ The Board finds that appellant did not submit probative evidence that her coffee creamer was spiked with Clonazepam at the time, place, and in the manner alleged. Thus, appellant has failed to establish a compensable factor of employment.

On appeal, appellant argues that she was deliberately drugged at work by an unknown assailant and experienced severe trauma due to the situation. She notes that she provided evidence that the drug was in her system. As noted above, however, appellant has not established a factual basis to corroborate her allegation that a coworker spiked her coffee creamer at work. For this reason, she has failed to establish her emotional condition claim.

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.606 and 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish that her coffee creamer was spiked with Clonazepam at work causing an emotional condition.

¹⁷ *K.W.*, 59 ECAB 271 (2007); *Robert Breeden*, *supra* note 5.

¹⁸ See *Pamela R. Rice*, 38 ECAB 838, 841 (1987).

¹⁹ See *M.B.*, Docket No. 13-1294 (issued September 20, 2013).

ORDER

IT IS HEREBY ORDERED THAT the April 22, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2015
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board